(1) D.B. Civil Writ Petition No.621/2000
Hindustan Copper Ltd. & Anr. Vs. U.O.I. & Ors.

(2) D.B. Civil Writ Petition No.622/2000
Hindustan Copper Ltd. & Anr. Vs. U.O.I. & Ors.

Date of order : 01.02.2007

HON'BLE THE CHIEF JUSTICE MR.S.N.JHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Abhay Bhandari Sr. Adv. with
Mr. Kinshuk Jain for petitioners.

Mr. B.L. Awasthi, Addl. GA for State.

These two writ petitions have been filed seeking a declaration that Section 4 of the Rajasthan Motor Vehicles Taxation Act, 1951 and Rule 42 of the Rajasthan Motor Vehicles Taxation Rules, 1951 are unconstitutional. Similar declaration has been sought with respect to notifications dated 24.4.97, 22.5.97 and 19.6.92.

We have dealt with the validity of these provisions in Civil Misc. Application No.177/06 titled Federation of Mining Association Vs. Union of India & Ors. only today. The heart of the dispute is whether the dumpers used in mining premises are `motor vehicles' within the meaning of Section 2(28) of the Motor Vehicle Act, 1988 so as to be exigible to tax under the Rajasthan Motor Vehicles Taxation Act and Rules framed therein. The point stands settled by the Supreme Court in Chief General Manager, Jagannath Area

and others Vs. State of Orissa and Another, (1996) 10 SCC 676 and Bose Abraham Vs. State of Kerala and Another, (2001) 3 SCC 157. In fact, the subject matter of the dispute in the former case was dumpers. It has been held that merely because a vehicle is put to a specific use and confined to enclosed premises does not make it is a different kind of vehicle.

As regards rule 42 of the Rules, we may observe that in terms of the first proviso to rule 42 it is open to the owner of the vehicle / chassis to opt to have the cost of his vehicle assessed at current price of similar type of vehicle as prevailing on 1st April of the year in which the tax is due. It is not in dispute that tax can be assessed on the basis of value of the vehicle. No objection therefore can be taken to the validity of the rule. It would thus appear that the questions raised in these writ petitions stand settled.

Counsel for the petitioners attempted to challenge validity of the assessment orders. It was submitted that the petitioners had filed appeal before the Regional Transport Authority and also moved the State Government in revision after the appellate authority declined to stay the assessment orders. After the Additional Transport Commissioner (Revision) exercising the powers of the State Government dismissed the revision petitions, the appeals were

dismissed by the appellate authority.

The grievance of the petitioners is that opportunity as provided in Section 8A of the Rajasthan Motor Vehicles Taxation Act, 1951 was not provided to the petitioners. Counsel also referred to decrease in the number of vehicles. We are of the view that it would be in the interest of justice to direct the appeals preferred by the petitioners to be reheard on merit. It goes without saying that questions of fact can be better gone into and decided by the appellate authority or the revisional authority, as the case may be.

We accordingly while dismissing these writ petitions direct the Regional Transport Authority, Jaipur to re-hear the appeals on merit. The petitioners shall produce copy of this order to the authority within three weeks for the needful. On such production, a date will be fixed for hearing and appeals will be decided in accordance with law.

(Mohammad Rafiq),J. **(S.N.Jha),CJ**

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